

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.22 - RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES IN IDAHO

DOCKET NO. 16-0322-0901

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency and the Board of Health and Welfare has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 39-3305, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held:

WEDNESDAY - SEPTEMBER 9, 2009 - 2:00 p.m.

DHW - MEDICAID CENTRAL OFFICE
3232 Elder Street
Conference Room D
Boise, ID

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The 2009 Idaho Legislature passed House Bill 146 relating to the Idaho Residential Care or Assisted Living Act. This bill amended payment level requirements for residents who are not clients of the Department (private-pay). This law requires a facility to assess a private-pay resident for his needs and types of services and supports through the assessment and individual negotiated service agreement. The rate charged for a private-pay resident will be determined based on his needs including furnishings, equipment, supplies and basic services that he requires.

These rule changes require that certain information be provided by the facility to the resident prior to admissions that discloses how an assessment is made for needed services, rates and fee structure, how fee increases must be handled, and discharge or transfer of residents due to change in condition of resident and fee increases.

These rules are also being amended to update the Department's unit responsible for Licensing and Certification, as well as the website. Only sections that are being published in this rule docket have the underline/strike out text for this update.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 1, 2009, Idaho Administrative Bulletin, Vol. 09-4, Page 17.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Randy May at (208) 334-5747.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2009.

DATED this 31st day of July, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720, Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0322-0901

003. ADMINISTRATIVE APPEALS AND CONTESTED CASES.

01. Administrative Appeals and Contested Cases. Administrative appeals and contested cases are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-30-06)

02. Informal Dispute Resolution Meeting. If a facility disagrees with a deficiency cited for a core issue, it may request an informal dispute resolution meeting to the ~~Bureau of Facility Standards~~ Licensing and Certification Unit. The policy and procedure for requesting informal dispute resolution is posted on the Licensing and ~~Survey Agency Certification~~ website at <http://www.healthandwelfare.idaho.gov/Medical/LicensingCertification/tabid/124/Default.aspx>. (3-30-06)()

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (3-30-06)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (3-30-06)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (3-30-06)

04. Telephone. (208) 334-5500. (3-30-06)

05. Internet Website Address. The Department Internet website address is: <http://www.healthandwelfare.idaho.gov>. (3-30-06)

06. Licensing and ~~Survey Agency~~ Certification Unit. The Department's Licensing and ~~Survey Agency~~ Certification Unit, 3232 Elder Street, Boise, ID 83705; Phone: 208 334-6626. (3-30-06)()

07. Licensing and ~~Survey Agency~~ Certification Unit Website. <http://www.healthandwelfare.idaho.gov/Medical/LicensingCertification/tabid/124/Default.aspx>. (3-30-06)()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (3-30-06)

02. Public Records. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Public records in the custody of the Department of Health and Welfare are subject to disclosure, unless otherwise exempted by state and federal law. (3-30-06)

03. Disclosure of Resident Identity. Information received by the Department through filed reports, inspections, or as otherwise authorized under the law, will not be disclosed publicly in such a manner as to identify individual residents except as necessary in a proceeding involving a question of licensure. (3-30-06)

04. Public Availability of Deficiencies. The survey documents relating to a facility will be available to the public upon written request to the Department and posted on the Licensing and ~~Survey Agency~~ Certification website at <http://www.healthandwelfare.idaho.gov/Medical/LicensingCertification/tabid/124/Default.aspx>. (3-30-06)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.

01. Abuse. The non-accidental act of sexual, physical or mental mistreatment, or injury of a resident through the action or inaction of another individual. (3-30-06)

02. Accident. An unexpected, unintended event that can cause a resident injury. (3-30-06)

03. Activities. All organized and directed social and rehabilitative services a facility provides, arranges, or cooperates with. (3-30-06)

04. Activities of Daily Living. The performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment, including bathing, washing, dressing, toileting, grooming, eating, communicating, continence, and mobility. (3-30-06)

05. Administrator. An individual, properly licensed by the Bureau of Occupational Licensing, who is responsible for day to day operation of a residential care or assisted living facility. (3-30-06)

06. Adult. A person who has attained the age of eighteen (18) years. (3-30-06)

07. Advance Directive. A written instruction, such as a living will or durable power of attorney for health care, recognized under State Law, whether statutory or as recognized by the courts of the State, and relates to the provision of medical care when the individual is unable to communicate. (3-30-06)

08. Advocate. An authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a population group served by a facility. (3-30-06)

09. Ambulatory Person. A person who, unaided by any other person, is physically and mentally capable of walking a normal path to safety, including the ascent and descent of stairs. (3-30-06)

10. Assessment. The conclusion reached using uniform criteria which identifies resident strengths, weaknesses, risks and needs, to include functional, medical and behavioral needs. (3-30-06)

11. Authentication. Proof of authorship. (3-30-06)

12. Authorized Provider. An individual who is a nurse practitioner or clinical nurse specialist or physician assistant. (3-30-06)

13. Basement. That portion of a building that is partly or completely below grade plane. A basement will be considered as a story above grade plane where the finished surface of the floor above the basement is: (1) More than six (6) feet (1829 mm) above grade plane; (2) More than six (6) feet (1829 mm) above the finished ground level for more than fifty percent (50%) of the total building perimeter; or (3) More than twelve (12) feet (3658 mm) above the finished ground level at any point. International Building Code-2003. (3-30-06)

14. Behavioral Plan. A written plan which decreases the frequency or intensity of maladaptive behaviors and increases the frequency of adaptive behaviors and introduces new skills. (3-30-06)

15. Call System. A signaling system whereby a resident can contact staff directly from their sleeping room, toilet room, and bathing area. The system may be voice communication; an audible or visual signal; and, may include wireless technology. (3-30-06)

16. Chemical Restraint. A medication used to control behavior or to restrict freedom of movement and is not a standard treatment for the resident's condition. (3-30-06)

17. Client of the Department. Any person who receives financial aid, or services, or both from an organized program of the Department. (3-30-06)

18. Complaint. A formal expression of dissatisfaction, discontent, or unhappiness by or on behalf of a resident concerning the care or conditions at the facility. This expression could be oral, in writing, or by alternative means of communication. (3-30-06)

19. Complaint Investigation. A survey to investigate the validity of allegations of noncompliance with applicable state requirements. (3-30-06)

20. Core Issue. A core issue is any one (1) of the following: abuse; neglect; exploitation; inadequate care; a situation in which the facility has operated for more than thirty (30) days without a licensed administrator designated the responsibility for the day to day operations of the facility; inoperable fire detection or extinguishing systems with no fire watch in place pending the correction of the system; or surveyors denied access to records, residents or facilities. (3-30-06)

21. Criminal Offense. Any crime as defined in Section 18-111, Idaho Code, in 18 U.S.C. Section 4A1.2(o), and 18 U.S.C. Sections 1001 through 1027. (3-30-06)

22. Deficiency. A determination of non-compliance with a specific rule or part of a rule. (3-30-06)

23. Dementia. A chronic deterioration of intellectual function and other cognitive skills severe enough to interfere with the ability to perform activities of daily living and instrumental activities of daily living. (3-30-06)

24. Department. The Idaho Department of Health and Welfare. (3-30-06)

25. Developmental Disability. A developmental disability, as defined in Section 66-402, Idaho Code, means chronic disability of a person which appears before the age of twenty-two (22) years of age and: (3-30-06)

a. Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism, or other conditions found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and (3-30-06)

b. Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity of independent living, or economic self-sufficiency; and (3-30-06)

c. Reflects the need for a combination and sequence of special, interdisciplinary or direct care,

treatment or other services which are of life-long or extended duration and individually planned and coordinated. (3-30-06)

26. Director. The Director of the Idaho Department of Health and Welfare or his designee. (3-30-06)

27. Electronic Signature, E-Signature. The system for signing electronic documents by entering a unique code or password that verifies the identity of the person signing and creates an individual "signature" on the record. (3-30-06)

28. Exit Conference. A meeting with the facility administrator or designee to: (1) provide review, discussion and written documentation of non-core issues (Punch List), and (2) to provide preliminary findings of core issues. (3-30-06)

29. Exploitation. The misuse of a resident's funds, property, resources, identity or person for profit or advantage, including: ~~(3-30-06)~~()

a. Charging a resident for services or supplies not provided; or ()

b. Charging a resident for services or supplies not disclosed in the written admission agreement between the resident and the facility. ()

011. DEFINITIONS AND ABBREVIATIONS F THROUGH M.

01. Follow-Up Survey. A survey conducted to confirm that the facility is in compliance and has the ability to remain in compliance. (3-30-06)

02. Functional Abilities Assessment. An assessment of the resident's degree of independence with which the resident performs activities of daily living and instrumental activities of daily living. (3-30-06)

03. Governmental Unit. The state, any county, municipality, or other political subdivision or any Department, division, board, or other agency thereof. (3-30-06)

04. Grade Plane. A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane will be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six (6) feet (1829 mm) from the building, between the building and a point six (6) feet (1829 mm) from the building. International Building Code - 2003. (3-30-06)

05. Hands On. Physical assistance to the resident beyond verbal prompting. (3-30-06)

06. Hourly Adult Care. Nonresident daily services and supervision provided by a facility to individuals who are in need of supervision outside of their personal residence for a portion of the day. (3-30-06)

07. Immediate Danger. Any resident is subject to an imminent or substantial danger. (3-30-06)

08. Inadequate Care. When a facility fails to provide the services required to meet the terms of the Negotiated Service Agreement, or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services, a safe living environment, or engages in violations of resident rights or takes residents who have been admitted in violation of the provisions of Section 39-3307, Idaho Code. (3-30-06)

09. Incident. An event that can cause a resident injury. (3-30-06)

10. Incident, Reportable. A situation when a facility is required to report information to the Licensing and Survey Agency Certification Unit. ~~(3-30-06)~~()

a. Resident injuries of unknown origin. This includes any injury, the source of which was not

observed by any person or the source of the injury could not be explained by the resident; or the injury includes severe bruising on the head, neck, or trunk, fingerprint bruises anywhere on the body, laceration, sprains, or fractured bones. Minor bruising and skin tears on the extremities need not be reported. (3-30-06)

b. Resident injury resulting from accidents involving facility-sponsored transportation. Examples: falling from the facility's van lift, wheel chair belt coming loose during transport, or an accident with another vehicle. (3-30-06)

c. Resident elopement of any duration. Elopement is when a resident who is unable to make sound decisions physically leaves the facility premises without the facility's knowledge. (3-30-06)

d. An injury due to resident-to-resident incident. (3-30-06)

e. An incident that results in the resident's need for hospitalization, treatment in a hospital emergency room, fractured bones, IV treatment, dialysis, or death. (3-30-06)

11. Independent Mobility. A resident's ability to move about freely of their own choice with or without the assistance of a mobility device such as a wheelchair, cane, crutches, or walker. (3-30-06)

12. Instrumental Activities of Daily Living. The performance of secondary level of activities that enables a person to live independently in the community, including preparing meals, access to transportation, shopping, laundry, money management, housework, and medication management. (3-30-06)

13. Legal Guardian or Conservator. A court-appointed individual who manages the affairs or finances or both of another who has been found to be incapable of handling his own affairs. (3-30-06)

14. License. A permit to operate a facility. (3-30-06)

15. Licensing and ~~Survey Agency~~ Certification Unit. The section of the Department responsible for licensing and surveying residential care or assisted living facilities. (~~3-30-06~~)()

16. Medication. Any substance or drug used to treat a disease, condition, or symptom, which may be taken orally, injected, or used externally and is available through prescription or over-the-counter. (3-30-06)

17. Medication Administration. It is a process where a prescribed medication is given to a resident by one (1) of several routes by licensed nurses. (3-30-06)

18. Medication Assistance. The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a person who cannot independently self-administer medications. IDAPA 23.01.01. "Rules of the Idaho State Board of Nursing," Section 010. (3-30-06)

19. Medication Dispensing. The act of filling, labeling and providing a prescribed medication to a resident. (3-30-06)

20. Medication, Self-Administration. The act of a resident taking a single dose of his own medication from a properly labeled container and placing it internally in, or externally on, his own body as a result of an order by a authorized provider. (3-30-06)

21. Mental Disorders. Health conditions that are characterized by alterations in thinking, mood or behavior (or some combination thereof), that are all mediated by the brain and associated with distress and or impaired functioning. (3-30-06)

22. Mental Illness. Refers collectively to all diagnosable mental disorders. (3-30-06)

23. Monitoring Visit. A visit by a representative of the Licensing and ~~Survey Agency~~ Certification Unit for the purpose of assuring residents are not in immediate danger. (~~3-30-06~~)()

24. Neglect. Failure to provide food, clothing, shelter, or medical care necessary to sustain the life and health of a resident. (3-30-06)

25. Negotiated Service Agreement. The plan reached by the resident and/or their representative and the facility based on the assessment, physician or authorized provider's orders, admission records, and desires of the resident, and which outlines services to be provided and the obligations of the facility and the resident. (3-30-06)

26. Non-Core Issue. Any finding of deficiency that is not a core issue. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

215. REQUIREMENTS FOR A FACILITY ADMINISTRATOR.

Each facility must be organized and administered under one (1) licensed administrator assigned as the person responsible for the operation of the facility. Multiple facilities under one (1) administrator may be allowed by the Department based on an approved plan of operation. (3-30-06)

01. Administrator Responsibility. The administrator is responsible for assuring that policies and procedures required in Title 39, Chapter 33, Idaho Code and IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho" are implemented. (3-30-06)

02. Availability of Administrator. The facility's administrator must be on site sufficiently to provide for safe and adequate care of the residents to meet the terms in the Negotiated Service Agreement. The facility's administrator or his designee must be available to be on-site at the facility within two (2) hours. (3-30-06)

03. Thirty Day Operation Limit. The facility may not operate for more than thirty (30) days without a licensed administrator. (3-30-06)

04. Representation of Residents. The administrator, his relatives, or employees cannot act as or seek to become the legal guardian of, or have power of attorney for any resident. Specific limited powers of attorney to address emergency procedures where competent consent cannot otherwise be obtained are permitted. (3-30-06)

05. Responsibility for Acceptable Admissions. The administrator must assure that no resident is knowingly admitted or retained who requires care as defined in Section 39-3307, Idaho Code, and Subsection 152.05 of these rules. (3-30-06)

06. Sexual Offender. The administrator must assure that a non-resident on the sexual offender registry is not allowed to live or work in the facility. The registry may be accessed at http://www.isp.state.id.us/sor_id/. (3-30-06)

07. Notification of Adult Protection and Law Enforcement. The administrator must assure that adult protection and law enforcement are notified in accordance with Section 39-5310, Idaho Code. (3-30-06)

08. Procedures for Investigations. The administrator must assure the facility procedures for investigation of incidents, accidents, and allegations of abuse, neglect, or exploitation are implemented to assure resident safety. (3-30-06)

09. Notification of Reportable Incidents. The administrator must assure notification to the Licensing and ~~Survey Agency~~ Certification Unit of reportable incidents. ~~(3-30-06)~~(____)

10. Administrator's Designee. A person authorized in writing to act in the absence of the administrator and who is knowledgeable of facility operations, the residents and their needs, emergency procedures, the location and operation of emergency equipment, and how the administrator can be reached in the event of an emergency. (3-30-06)

11. **Ability to Reach Administrator or Designee.** The administrator or his designee must be reachable and available at all times. (3-30-06)

12. **Minimum Age of Personnel.** The administrator will assure that no personnel providing hands-on care or supervision services will be under eighteen (18) years of age unless they have completed a certified nursing assistant (CNA) certification course. (3-30-06)

13. **Notification to Licensing and Certification Unit.** The facility must notify the Licensing and Certification Unit, in writing, within three (3) business days of a change of administrator. ()

216. -- 2198. (RESERVED).

219. REQUIREMENTS FOR ADMISSION AGREEMENTS FOR DEPARTMENT CLIENTS.

01. **Initial Resident Assessment.** Prior to or on the day of admission each resident must be assessed to ensure the resident is appropriate for placement in a residential care or assisted living facility. ()

02. **Resident Assessment.** Within twelve (12) days of admission, each resident must be assessed as required in Section 660 of these rules. The result of the assessment will determine the need for specific services and supports and establish the reimbursement rate for those services. ()

03. **Written Agreement.** The admission agreement may be integrated within the Negotiated Service Agreement, provided that all requirements for the Negotiated Service Agreement in Section 320 of these rules are met. ()

220. REQUIREMENTS FOR ADMISSION AGREEMENTS FOR PRIVATE-PAY RESIDENTS.

01. **Resident Assessment.** Prior to or on the day of admission, each private-pay resident must be assessed as required in Section 650 of these rules. The result of the assessment will determine the need for specific services and supports. ()

02. **Written Agreement.** Prior to or on the day of admission, the facility and each resident or the resident's legal guardian or conservator ~~will~~ must enter into a written admission agreement that is transparent, understandable, and is translated into a language the resident or his representative understands. The admission agreement will provide a complete reflection of the facility's charges, commitments agreed to by each party, and the actual practices that will occur in the facility. The agreement must be signed by all involved parties, and a complete copy provided to the resident and the resident's legal guardian or conservator prior to or on the day of admission. The admission agreement may be integrated within the Negotiated Service Agreement, provided that all requirements for the Negotiated Service Agreement in Section 320 of these rules and the admission agreement are met. Admission agreements must include all items described under Subsections 220.043 through 220.138 of ~~these~~ this rules. (3-30-06)()

043. **Services ~~Provided~~, Supports, and Rates.** ~~Services~~ The facility provides including: room, board, assistance with activities of daily living, supervision, assistance and monitoring of medications, laundering of linens owned by the facility, coordination of outside services, arrangement for routine, urgent, and emergency medical and dental services, emergency interventions, housekeeping services, maintenance, utilities, access to basic television in common areas, maintenance of self help skills, recreational activities, and provisions for trips to social functions. must identify the following services, supports, and applicable rates: (3-30-06)()

- a. Basic services must, at a minimum, include: ()
 - i. Rent: ()
 - ii. Utilities: ()
 - iii. Food: ()

- iv. Activities of daily living services; ()
- v. Supervision; ()
- vi. First aid; ()
- vii. Assistance with and monitoring of medications; ()
- viii. Laundrying of linens owned by the facility; ()
- ix. Emergency interventions and coordination of outside services; ()
- x. Housekeeping and maintenance; and ()
- xi. Access to basic television in common areas. ()
- b.** The resident's monthly charges must be specific and describe the services that are included in the basic services rate and the charged rate. ()
- c.** The facility must disclose all prices, formulas, and calculations used to determine the resident's basic services rate including: ()
 - i. Service packages; ()
 - ii. Fee-for-service rates; ()
 - iii. Assessment forms; ()
 - iv. Price per assessment point; ()
 - v. Charges for levels of care determined with an assessment; and ()
 - vi. Move-in fees or other similar charges. ()
- d.** Services or amenities that are not contained in the description of basic services are considered additional services. The facility must describe the services and rates charged for additional or optional services, supplies, or amenities that are available through the facility or arranged for by the facility for which the resident will be charged additional fees. ()
- e.** Services or rates that are impacted by an updated assessment of the resident must be identified, as well as the assessment tool, the assessor, and the frequency of the assessment, when the facility uses this assessment to determine rate changes. ()
- f.** The facility may charge residents for the use of personal furnishings, equipment, and supplies provided by the facility for private-pay residents. The facility must provide a detailed itemization of furnishings, equipment, supplies, and the rate for those items the resident will be charged. ()

024. Staffing. Staffing patterns and qualification of staff on duty during a normal day. (3-30-06)

035. Notification of Liability Insurance Coverage. The administrator of a residential care or assisted living facility must disclose in writing at the time of admission or before a resident's admission if the facility does not carry professional liability insurance. If the facility cancels the professional liability insurance all residents must be notified of the change in writing. (3-30-06)

046. Medication Responsibilities. The facility's and resident's roles and responsibilities relating to assistance with medications including the reporting of missed doses or those taken on a PRN basis. (3-30-06)

- ~~057.~~ **Resident Personal Fund Responsibilities.** Who is responsible for the resident's personal funds. (3-30-06)
- ~~068.~~ **Resident Belongings Responsibility.** Responsibility for protection and disposition of all valuables belonging to the resident and provision for the return of resident's valuables if the resident leaves the facility. (3-30-06)
- ~~079.~~ ~~**Fee Description and Emergency Transfers.**~~ ~~Fee description and e~~Conditions under which emergency transfers will be made as provided in Section 152 of these rules. (~~3-30-06~~)()
- 10. Billing Practices, Notices, and Procedures for Payments and Refunds.** The facility must provide a description of the facility's billing practices, notices, and procedures for payments and refunds. The following procedures must be included: ()
- a. Arrangement for payments; (3-30-06)
- b. ~~How~~ Under what circumstances and time frame a partial month's resident fees are to be refunded when a resident no longer resides in the facility; (~~3-30-06~~)()
- c. Written notice to vacate the facility must be given thirty (30) calendar days prior to transfer or discharge on the part of either party except in the ~~following situations~~; (~~3-30-06~~)
- i. ~~In the case of the resident's emergency discharge or death, fifteen (15) days notice is required. The date of death begins the fifteen (15) days notice requirement; and~~ (~~3-30-06~~)
- ii. ~~In the case of an emergency condition that requires a resident's transfer, fifteen (15) days notice is required. The date of transfer starts the facility may charge up to fifteen (15) days notice requirement prorated rent from the date of the resident's emergency discharge or death.~~ (~~3-30-06~~)()
- ~~0811.~~ **Resident Permission to Transfer Information.** Permission to transfer information from the resident's records to any facility to which the resident transfers. (3-30-06)
- ~~0912.~~ **Resident Responsibilities.** Resident responsibilities, as appropriate. (3-30-06)
- ~~103.~~ **Restrictions on Choice of Care or Service Providers.** Any restriction on choice of care or service providers, such as pharmacy, home health agency, hospice agency, physician or authorized provider. (3-30-06)
- ~~114.~~ **Advance Directive.** Written documentation of the resident's preference regarding the formulation of an Advance Directive in accordance with Idaho state law. When a resident has an Advanced Directive, a copy must be immediately available for staff and emergency personnel. (3-30-06)
- 125. Notification of Payee Requirements.** Notification if the facility requires as a condition of admission that the administrator or an employee of the facility be named as payee; ~~and~~. (~~3-30-06~~)()
- 16. Contested Charges.** The facility must provide the methods by which a resident may contest charges or rate increases that include contacting the Ombudsman for the Elderly. The facility must respond as provided under Section 711.02 of these rules. ()
- 17. Transition to Publicly-Funded Program.** The facility must disclose the conditions under which the resident can remain in the facility, if payment for the resident shifts to a publicly-funded program. ()
- ~~138.~~ **Other Information.** Other information that the facility may deem appropriate. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

250. REQUIREMENTS FOR BUILDING CONSTRUCTION AND PHYSICAL STANDARDS.

01. Building Character. All buildings utilized as residential care or assisted living facilities must be of such character as to be suitable for such use. Facilities must be of such character as to enhance normalization and integration of residents into the community. (3-30-06)

02. Plans and Specifications. Plans and specifications for any proposed new facility construction, any addition or remodeling are governed by the following: (3-30-06)

a. Plans must be prepared by an architect or engineer licensed in the state of Idaho. A variance of this requirement may be granted by the Licensing and Survey Agency when the size of the project does not necessitate involvement of an architect or engineer; (3-30-06)

b. Plans and specifications must be submitted to the Licensing and Survey Agency to assure compliance with applicable construction standards, codes, and regulations; (3-30-06)

c. Newly constructed or converted buildings housing ~~sixteen~~ seventeen (16~~7~~) or more residents must submit professionally prepared drawings or plans of the kitchen and a listing of all kitchen equipment for review and approval prior to construction. ~~(3-30-06)~~()

03. Remodeling or Additions. Remodeling of or additions to a facility will be consistent with all applicable fire and life safety requirements. (3-30-06)

04. Approval. All buildings, additions and remodeling are subject to approval by the Licensing and Survey Agency and must meet applicable requirements. (3-30-06)

05. Walls and Floor Surfaces. Walls and floors must be of such character to permit cleaning. Walls and ceilings in kitchens, bathrooms, and utility rooms must have washable surfaces. (3-30-06)

06. Toilet and Bathrooms. Each facility must provide: (3-30-06)

a. A toilet and bathroom for resident use so arranged that it is not necessary for an individual to pass through another resident's room to reach the toilet or bath; (3-30-06)

b. Solid walls or partitions to separate each toilet and bathroom from all adjoining rooms; (3-30-06)

c. Mechanical ventilation to the outside from all inside toilets and bathrooms not provided with an operable exterior window; (3-30-06)

d. Each tub, shower, and lavatory with hot and cold running water; (3-30-06)

e. At least one (1) flush toilet for every six (6) residents; (3-30-06)

f. At least one (1) tub or shower for every eight (8) residents; (3-30-06)

g. At least one (1) lavatory with a mirror for each toilet; and (3-30-06)

h. At least one (1) toilet, tub or shower, and lavatory in each building in which residents sleep, with additional units if required by the number of persons. (3-30-06)

07. Accessibility for Persons With Mobility and Sensory Impairments. For residents with mobility or sensory impairments, the facility must provide a physical environment which meets the needs of the person for independent mobility and use of appliances, bathroom facilities, and living areas. New construction must meet the requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Existing facilities must comply, to the maximum extent feasible, with 28 CFR Sections 36.304 and 36.305 regarding removal of barriers under the Americans with Disabilities Act, without creating an undue hardship or burden on the facility, and must provide as required, the necessary accommodations: (3-30-06)

- a.** Ramps for residents who require assistance with ambulation shall comply with the requirements of the ADAAG 4.8; (3-30-06)
- b.** Bathrooms and doors large enough to allow the easy passage of a wheelchair as provided for in the ADAAG 4.13; (3-30-06)
- c.** Grab bars in resident toilet and bathrooms in compliance with ADAAG 4.26; (3-30-06)
- d.** Toilet facilities in compliance with ADAAG 4.16 and 4.23; (3-30-06)
- e.** Non-retractable faucet handles in compliance with ADAAG 4.19, with the exception of self-closing valves under 4.19.5, and 4.27; and (3-30-06)
- f.** Suitable hand railing must be provided on both sides of all stairs leading into and out of a building for residents who require the use of crutches, walkers, or braces. (3-30-06)
- 08. Lighting.** The facility must provide adequate lighting in all resident sleeping rooms, dining rooms, living rooms, recreation rooms, and hallways. (3-30-06)
- 09. Ventilation.** The facility must be ventilated, and precautions shall be taken to prevent offensive odors. (3-30-06)
- 10. Plumbing.** All plumbing in the facility must comply with local and state codes. All plumbing fixtures must be easily cleanable and maintained in good repair. The temperature of hot water at plumbing fixtures used by residents must be between one hundred five degrees (105°F) Fahrenheit and one hundred twenty degrees (120°F) Fahrenheit. (3-30-06)
- 11. Heating.** A heating system must be provided for the facility that is capable of maintaining a minimum temperature of seventy degrees (70°F) Fahrenheit during the day and a minimum of sixty-two degrees (62°F) Fahrenheit during the night. Wood stoves are not be permitted as the sole source of heat and the thermostat for the primary source of heat must be remotely located away from any wood stove. (3-30-06)
- 12. Dining, Recreation, Shower, Bathing and Living Space.** The total area set aside for these purposes must be no less than thirty (30) square feet per licensed bed. A hall or entry can not be included as living or recreation space. (3-30-06)
- 13. Resident Sleeping Rooms.** The facility must assure that: (3-30-06)
- a.** Resident sleeping rooms are not in attics, stairs, halls, or any other room commonly used for other than bedroom purposes; (3-30-06)
- b.** A room with a window that opens into an exterior window well cannot be used for a resident sleeping room; (3-30-06)
- c.** Not more than four (4) residents can be housed in any multi-bed sleeping room in facilities licensed prior to July 1, 1991. New facilities or building converted to a licensed facility after July 1, 1992, cannot have more than two (2) residents in any multi-bed sleeping room. When there is any change in ownership of the facility, the maximum number of residents allowed in any room is two (2); (3-30-06)
- d.** Square footage requirements for resident sleeping rooms must provide for not less than one hundred (100) square feet of floor space per resident in a single-bed sleeping room and not less than eighty (80) square feet of floor space per resident in a multi-bed sleeping room; (3-30-06)
- e.** Each resident's sleeping room must be provided with an operable exterior window. An operable window is not required where there is a door directly to the outside from the sleeping room; (3-30-06)

- f.** The operable window sill height must not exceed thirty-six (36) inches above the floor in new construction, additions, or remodeling; (3-30-06)
- g.** The operable window sill height must not exceed forty-four (44) inches above the floor in existing buildings being converted to a facility; (3-30-06)
- h.** Each resident sleeping room must provide a total window space that equals at least eight percent (8%) of the room's total square footage; (3-30-06)
- i.** Window screens must be provided on operable windows; (3-30-06)
- j.** Resident sleeping rooms must have walls that run from floor to ceiling; have doors that will limit the passage of smoke; and provide the resident(s) with privacy; (3-30-06)
- k.** Ceiling heights in sleeping rooms must be at least seven (7) feet, six (6) inches; and (3-30-06)
- l.** Closet space in each resident sleeping room must provide at least four (4) usable square feet per resident. Common closets used by two (2) or more residents must have substantial dividers for separation of each resident's clothing. All closets must be equipped with doors. Free-standing closets are deducted from the square footage of the sleeping room. (3-30-06)
- 14. Secure Environment.** If the facility accepts and retains residents who have cognitive impairment, the facility must provide an interior environment and exterior yard which is secure and safe. (3-30-06)
- 15. Call System.** The facility must have a call system. The call system cannot be a substitute for supervision. For facilities licensed prior to January 1, 2006, when the current system is no longer operational or repairable the facility must install a call system as defined in these rules. (3-30-06)
- 16. Dietary Standards.** Each facility must have a full service kitchen to meet the needs of the residents. Any satellite kitchen must meet all applicable requirements. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

430. REQUIREMENTS FOR FURNISHINGS, EQUIPMENT, SUPPLIES, AND BASIC SERVICES.

Each facility must provide ~~at no additional cost~~ to the resident: ~~(3-30-06)~~(____)

01. Common Shared Furnishings. Appropriately designed and constructed furnishings to meet the needs of each resident, including reading lamps, tables, and comfortable chairs or sofas; all items must be in good repair, clean, ~~and~~ safe, and provided at no additional cost to the resident. ~~(3-30-06)~~(____)

02. Resident Sleeping Room Furnishings. Comfortable furnishings and individual storage, such as a dresser, for personal items for each resident in each sleeping room; all items must be in good repair, clean, and safe. (3-30-06)

03. Resident Bed. Each resident must be provided his own bed, which will be at least thirty-six (36) inches wide, substantially constructed, clean, and in good repair. Roll-away beds, cots, futons, folding beds, or double bunks are prohibited. Bed springs must be in good repair, ~~and~~ clean, and comfortable. Bed mattresses must be standard for the bed, clean, and odor free. A pillow must be provided. ~~(3-30-06)~~(____)

04. Resident Telephone Privacy. The facility must have at least one (1) telephone that is accessible to all residents, and provide local calls at no additional cost. The telephone must be placed in such a manner as to provide the resident privacy while using the telephone. ~~(3-30-06)~~(____)

05. Basic Services. The following are basic services to be provided to the resident by the facility ~~at no~~

~~additional cost to the resident~~ within the basic services rate: ~~room, board~~ ()

a. Rent: ()

b. Utilities: ()

c. Food: ()

d. Activities of daily living services, supervision; ()

e. First aid: ()

f. Assistance with and monitoring of medications; ()

g. Laundering of linens owned by the facility; ()

h. Emergency interventions and coordination of outside services; ~~arrangement for emergency transportation, emergency interventions, first aid,~~ ()

i. Housekeeping ~~services~~; and maintenance; ~~utilities~~; and ()

j. ~~Access~~ to basic television in common areas. (3-30-06)()

06. Basic Supplies. The following are to be supplied by the facility at no additional cost to the resident: linens, towels, wash cloths, liquid hand soap, ~~shampoo, comb, hairbrush~~, toilet paper, ~~sanitary napkins~~, and first aid supplies, ~~electric razors or other means of shaving, toothbrush, and toothpaste~~ unless the resident chooses to provide his own. (3-30-06)()

07. Personal Supplies. Soap, shampoo, hair brush, comb, electric razor or other means of shaving, toothbrush, toothpaste, sanitary napkins, and incontinent supplies must be provided by the facility unless the resident chooses to provide his or her own. The facility may charge the resident for personal supplies the facility provides and must itemize each item being charged to the resident. ()

07. Resident Supplies and Furnishings. If a resident chooses to provide his or her own supplies or furnishings, the facility must assure that the resident's supplies or furnishings meet the minimum standards as identified in Subsections 430.01 through 430.06 of this rule. (3-30-06)()

(BREAK IN CONTINUITY OF SECTIONS)

550. REQUIREMENTS FOR RESIDENTS' RIGHTS.

The administrator must assure that policies and procedures are implemented to assure that residents' rights are observed and protected. (3-30-06)

01. Resident Records. The facility must maintain and keep current a record of the specific information on each resident. Upon request a resident must be provided access to information in his record. (3-30-06)

a. A copy of the resident's current Negotiated Service Agreement and physician or authorized provider's order; (3-30-06)

b. Written acknowledgement that the resident has received copies of the rights; (3-30-06)

c. A record of all personal property and funds that the resident has entrusted to the facility, including copies of receipts for the property; (3-30-06)

- d.** Information about any specific health problems of the resident that may be useful in a medical emergency; (3-30-06)
- e.** The name, address, and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident; (3-30-06)
- f.** Any other health-related, emergency, or pertinent information which the resident requests the facility to keep on record; and (3-30-06)
- g.** The current admission agreement between the resident and the facility. (3-30-06)
- 02. Privacy.** Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups. (3-30-06)
- 03. Humane Care and Environment.** (3-30-06)

 - a.** Each resident has the right to humane care and a humane environment, including the following: (3-30-06)

 - i. The right to a diet that is consistent with any religious or health-related restrictions; (3-30-06)
 - ii. The right to refuse a restricted diet; and (3-30-06)
 - iii. The right to a safe and sanitary living environment. (3-30-06)
 - b.** Each resident has the right to be treated with dignity and respect, including: (3-30-06)

 - i. The right to be treated in a courteous manner by staff; (3-30-06)
 - ii. The right to receive a response from the facility to any request of the resident within a reasonable time; and (3-30-06)
 - iii. The right to be communicated with, orally or in writing, in a language they understand. If the resident's knowledge of English or the predominant language of the facility is inadequate for comprehension, a means to communicate in a language familiar to the resident must be available and implemented. There are many possible methods such as bilingual staff, electronic communication devices, family and friends to translate. The method implemented must assure the resident's right of confidentiality, if the resident desires. (3-30-06)
- 04. Personal Possessions.** Each resident has the right to: (3-30-06)

 - a.** Wear his own clothing; (3-30-06)
 - b.** Determine his own dress or hair style; (3-30-06)
 - c.** Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity; and (3-30-06)
 - d.** Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property. (3-30-06)
- 05. Personal Funds.** Residents whose board and care is paid for by public assistance will retain, for their personal use, the difference between their total income and the applicable board and care allowance established by Department rules. (3-30-06)

 - a.** A facility must not require a resident to deposit his personal funds with the facility; and (3-30-06)

b. Once the facility accepts the written authorization of the resident, it must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph. (3-30-06)

06. Management of Personal Funds. Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows: (3-30-06)

a. The facility must deposit any amount of a resident's personal funds in excess of five (5) times the personal needs allowance in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a non-interest bearing account or petty cash fund; (3-30-06)

b. The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record; and (3-30-06)

c. Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate. For clients of the Department, the remaining balance of funds must be refunded to the Department. (3-30-06)

07. Access and Visitation Rights. Each facility must permit: (3-30-06)

a. Immediate access to any resident by any representative of the Department, by the state ombudsman for the elderly or his designees, or by the resident's individual physician; (3-30-06)

b. Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives; (3-30-06)

c. Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; and (3-30-06)

d. Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time. (3-30-06)

08. Employment. Each resident must have the right to refuse to perform services for the facility except as contracted for by the resident and the administrator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident must be consistent with state and federal law. (3-30-06)

09. Confidentiality. Each resident must have the right to confidentiality of personal and clinical records. (3-30-06)

10. Freedom from Abuse, Neglect, and Restraints. Each resident must have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints. (3-30-06)

11. Freedom of Religion. Each resident must have the right to practice the religion of his choice or to abstain from religious practice. Residents must also be free from the imposition of the religious practices of others. (3-30-06)

12. Control and Receipt of Health-Related Services. Each resident must have the right to control his receipt of health related services, including: (3-30-06)

a. The right to retain the services of his own personal physician, dentist, and other health care professionals; (3-30-06)

b. The right to select the pharmacy or pharmacist of his choice so long as it meets the statute and rules governing residential care or assisted living and the policies and procedures of the residential care or assisted living facility; (3-30-06)

c. The right to confidentiality and privacy concerning his medical or dental condition and treatment; and (3-30-06)

d. The right to refuse medical services based on informed decision making. Refusal of treatment does not relieve the facility of its obligations under this chapter. (3-30-06)

i. The facility must document the resident and his legal guardian have been informed of the consequences of the refusal; and (3-30-06)

ii. The facility must document that the resident's physician or authorized provider has been notified of the resident's refusal. (3-30-06)

13. Grievances. Each resident must have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents. (3-30-06)

14. Participation in Resident and Family Groups. Each resident must have the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility. (3-30-06)

15. Participation in Other Activities. Each resident must have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility. (3-30-06)

16. Examination of Survey Results. Each resident must have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Licensing and ~~Survey Agency~~ Certification Unit with respect to the facility and any plan of correction in effect with respect to the facility. ~~(3-30-06)~~()

17. Access by Advocates and Representatives. A residential care or assisted living facility must permit advocates and representatives of community legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the facility at reasonable times in order to: (3-30-06)

a. Visit, talk with, and make personal, social, and legal services available to all residents; (3-30-06)

b. Inform residents of their rights and entitlements, and their corresponding obligations, under state, federal and local laws by distribution of educational materials and discussion in groups and with individuals; (3-30-06)

c. Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which residents are aggrieved, that may be provided individually, or in a group basis, and may include organizational activity, counseling and litigation; (3-30-06)

d. Engage in all other methods of assisting, advising, and representing residents so as to extend to them the full enjoyment of their rights; (3-30-06)

e. Communicate privately and without restrictions with any resident who consents to the communication; and (3-30-06)

f. Observe all common areas of the facility. (3-30-06)

18. Access by Protection and Advocacy System. A residential care or assisted living facility must

permit advocates and representatives of the protection and advocacy system designated by the governor under 42 U.S.C. Section 15043 and 42 U.S.C. Section 10801 et seq., access to residents, facilities, and records in accordance with applicable federal statutes and regulations. (3-30-06)

19. Access by the Long Term Care Ombudsman. A residential care or assisted living facility must permit advocates and representatives of the long term care ombudsman program pursuant to 42 U.S.C. Section 3058, Section 67 5009, Idaho Code, and IDAPA 15.01.03, "Rules Governing the Ombudsman for the Elderly Program," access to residents, facilities and records in accordance with applicable federal and state law, rules, and regulations. (3-30-06)

20. Transfer or Discharge. Each resident must have the right to be transferred or discharged only for medical reasons, or for his welfare or that of other residents, or for nonpayment for his stay. In non-emergency conditions, the resident must be given at least thirty (30) calendar days notice of discharge. A resident has the right to appeal any involuntary discharge. (3-30-06)

21. Citizenship Rights. Each resident has a right to be encouraged and assisted to exercise rights as a citizen, including the right to be informed and to vote. (3-30-06)

22. Advanced Directives. ~~Each Resident~~ has the right to be informed, in writing, regarding the formulation of an advanced directive ~~to include applicable State law, as provided under~~ Section 39-4510, Idaho Code. (3-30-06)()

23. Fee Increases. Each resident has the right to written notice of any fee increase not less than thirty (30) days prior to the proposed effective date of the fee increase, except when a resident needs additional care, services, or supplies: and ()

a. The resident, the resident's legal guardian, or conservator agrees in writing to a specific rate or fee increase through an amendment of the admission agreement or the negotiated service agreement; and ()

b. The negotiated service agreement is amended to include provision for the additional care, services, or supplies. ()

c. In the event the facility and resident, the resident's legal guardian, or conservator are not in agreement with the change of condition fee increase, an automatic fifteen (15) day discharge notice will be in effect from the date of notification of the change of condition fee increase, unless there is a written agreement to extend the date of discharge. ()